

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JEFFREY ESTES,

Charging Party,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Respondent.

Case No. LA-CE-1120-H

Request for Reconsideration
PERB Decision No. 2302-H

PERB Decision No. 2302a-H

March 21, 2013

Appearances: Jeffrey Estes, on his own behalf; Carl D. Smith, Labor and Employment Relations Consultant, for Regents of the University of California.

Before Martinez, Chair; Huguenin and Winslow, Members.

DECISION

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration by Jeffrey Estes (Estes) of the Board's decision in *Regents of the University of California* (2012) PERB Decision No. 2302-H. In that decision, the Board dismissed the complaint and underlying charge alleging that the Regents of the University (University) suspended and terminated Estes's employment in retaliation for having engaged in protected activity, thereby committing an unfair practice under the Higher Education Employer-Employee Relations Act (HEERA).¹

In its decision, the Board adopted the determination of an administrative law judge (ALJ) following an evidentiary hearing that Estes failed to establish that the University took adverse action against him in retaliation for having engaged in protected activity. Estes requests reconsideration of the ALJ's determination that the evidence did not establish that the

¹ HEERA is codified at Government Code section 3560 et seq.

University “set him up to fail” by improperly assigning him additional duties, thereby establishing unlawful motivation.

The Board has reviewed Estes’s request for reconsideration and the University’s response thereto in light of the relevant law. Based on this review, the Board denies Estes’s request for reconsideration for the reasons discussed below.

DISCUSSION

Requests for reconsideration of a final Board decision are governed by PERB Regulation 32410(a),² which states in full:

Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. An original and five copies of the request for reconsideration shall be filed with the Board itself in the headquarters office and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required. The grounds for requesting reconsideration are limited to claims that: (1) the decision of the Board itself contains prejudicial errors of fact, or (2) the party has newly discovered evidence which was not previously available and could not have been discovered with the exercise of reasonable diligence. A request for reconsideration based upon the discovery of new evidence must be supported by a declaration under the penalty of perjury which establishes that the evidence: (1) was not previously available; (2) could not have been discovered prior to the hearing with the exercise of reasonable diligence; (3) was submitted within a reasonable time of its discovery; (4) is relevant to the issues sought to be reconsidered; and (5) impacts or alters the decision of the previously decided case.

Because reconsideration may only be granted under “extraordinary circumstances,” the Board applies the regulation’s criteria strictly. (*Regents of the University of California* (2000) PERB Decision No. 1354a-H.) A request for reconsideration “is not simply an opportunity to ask the Board to ‘try again.’” (*Chula Vista Elementary School District* (2004) PERB Decision

² PERB Regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

No. 1557a.) PERB Regulation 32410(a) allows a party to request reconsideration of a Board decision only on two grounds: (1) the decision contains “prejudicial errors of fact;” or (2) previously unavailable and undiscoverable newly discovered evidence that is both relevant and submitted within a reasonable time of discovery would impact or alter the decision. These limited grounds preclude a party from using the reconsideration process to reargue or relitigate issues that have already been decided. (*Redwoods Community College District* (1994) PERB Decision No. 1047a.) Simply arguing the same facts that were presented on appeal does not fulfill the requirements of PERB Regulation 32410. (*Oakland Unified School District* (2004) PERB Decision No. 1645a.) A disagreement over the legal analysis employed by the Board is not grounds for reconsideration even if it amounts to a prejudicial error of law resulting from application of its own case law. (*California State Employees Association (Hard, et al.)* (2002) PERB Decision No. 1479a-S.)

The instant request for reconsideration neither identifies prejudicial errors of fact,³ nor presents newly discovered evidence. Rather, it merely reiterates the arguments previously

³ Estes takes issue with the Board’s characterization of Estes’s exceptions in the Board’s decision in *Regents of the University of California, supra*, PERB Decision No. 2302-H. The Board characterized the exceptions in pertinent part as follows: “Estes’s exceptions focus primarily on his claim that the University improperly assigned him work” Estes argues that the issue before the ALJ was not whether the work was properly assigned, but rather whether the assignments were punitive in nature and designed in such a way to set him up for failure. Estes’s argument is rejected for three primary reasons. The characterization of the exceptions in the Board’s decision does not constitute a prejudicial error of fact. Also, the Board’s broad characterization of Estes’s claim encompasses the issue more specifically described by Estes. Last, the ALJ framed the issue in the same way as Estes. (See *Regents of the University of California, supra*, PERB Decision No. 2302-H adopting ALJ’s proposed decision, p. 21 [“Estes’s primary theory to establish an unlawful motive in this case is that the University assigned him job duties and training goals that no employee of his experience level could accomplish. Essentially, Estes claims they set him up to fail.”].) The ALJ more than adequately addressed Estes’s “set him up to fail” argument and rejected it. The Board endorsed the ALJ’s analysis in the Board’s adoption of the proposed decision. The limited grounds for reconsideration preclude Estes from using the reconsideration process to reargue or relitigate issues that have already been decided.

raised before the Board on exceptions to the ALJ's proposed decision. Therefore, we find no basis upon which to grant reconsideration.

ORDER

Jeffrey Estes's request for reconsideration of the Public Employment Relations Board's decision in *Regents of the University of California* (2012) PERB Decision No. 2302-H is hereby DENIED.

Members Huguenin and Winslow joined in this Decision.